

FILED

JUL 07 2017

**BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI**

ADMINISTRATIVE HEARING
COMMISSION

MISSOURI REAL ESTATE)
COMMISSION,)

Petitioner,)

v.)

CHERYL A. RAMOS,)

Respondent.)

Case No. 17-0635

**JOINT MOTION FOR CONSENT ORDER,
JOINT STIPULATION OF FACTS AND CONCLUSIONS OF LAW,
WAIVER OF HEARINGS
BEFORE THE ADMINISTRATIVE HEARING COMMISSION
AND THE MISSOURI REAL ESTATE COMMISSION,
AND DISCIPLINARY ORDER**

Respondent Cheryl A. Ramos ("Ramos") and Petitioner The Missouri Real Estate Commission ("MREC") enter into this *Joint Motion for Consent Order, Joint Stipulation of Facts and Conclusions of Law, Waiver of Hearings Before the Administrative Hearing Commission and Missouri Real Estate Commission, and Disciplinary Order* ("Joint Stipulation") for the purpose of resolving the Complaint filed against Respondent. Pursuant to the rules governing practice and procedure before the Administrative Hearing Commission ("Commission")(1 CSR 15-3.446(1), (3), and (5)) and pursuant to the terms of § 536.060, RSMo¹, as it is made applicable to the Commission by

¹All statutory citations are to the 2000 Revised Statutes of Missouri, as amended, unless

§ 621.135, RSMo, the parties move for a consent order and waive the right to a hearing and decision in the above-styled case by the Commission, and, additionally, the right to a disciplinary hearing before the MREC pursuant to § 621.110, RSMo, and jointly stipulate and agree that a final disposition of this matter may be effectuated as described below.

Ramos acknowledges that she understands the various rights and privileges afforded her by law, including the right to a hearing of the charges against her; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against her at the hearing; the right to present evidence on her behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against her; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the MREC at which time Ramos may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the MREC. Being aware of these rights provided Ramos by operation of law, Ramos knowingly and voluntarily waives each and every one of these rights and

otherwise noted.

freely enters into this Joint Stipulation. Ramos further agrees to abide by the terms of this document as they pertain to her.

Ramos acknowledges that she received a copy of the Complaint in this case, which was filed with the Commission on May 3, 2017. Ramos stipulates that the factual allegations contained in this Joint Stipulation are true and stipulates with the MREC that Ramos's Broker License No. 1999140761, is subject to disciplinary action by the MREC in accordance with the provisions of Chapter 621, RSMo, as amended and § 339.100.3, RSMo.

I. JOINT STIPULATION

Based upon the foregoing, the MREC and Ramos jointly stipulate to the following findings of fact and conclusions of law in lieu of the facts and conclusions of law as alleged in the Complaint filed in this case, and request that the Commission adopt the Joint Proposed Findings of Fact and the Joint Proposed Conclusions of Law as the Commission's Findings of Fact and Conclusions of Law.

JOINT PROPOSED FINDINGS OF FACT

1. On or about August 1, 2007, RMK Properties, LLC ("RMK") hired Ramos and her company to manage property it owned.
2. Ramos and her company managed the properties for RMK from 2007 until 2014.

3. Ramos capably managed the properties until around January of 2014.

4. Between January of 2014 and August of 2014 Ramos failed to remit deposits from the properties on at least five (5) occasions.

5. In August of 2014, Ramos' inaction forced RMK to employ the services of another realtor to manage its properties.

6. Ramos retained an employee in 2014 to perform the accounting of her business who had access to her brokerage operating account.

7. Ramos discovered that her employee had removed money from the brokerage operating account without her permission.

8. Ramos never reported the removal of the funds to authorities.

9. Ramos and her company owed RMK \$5,500.00 as a result of net rent proceeds from the managed properties.

10. Ramos remitted \$1,000 to RMK in partial repayment of monies owed.

JOINT PROPOSED CONCLUSIONS OF LAW

11. Section 339.100.2, RSMo, provides in part:

The commission may cause a complaint to be filed with the administrative hearing commission. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person

or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

(1) Failure to maintain and deposit in a special account, separate and apart from his or her personal or other business accounts, all moneys belonging to others entrusted to him or her while acting as a real estate broker or as the temporary custodian of the funds of others, until the transaction involved is consummated or terminated, unless all parties having an interest in the funds have agreed otherwise in writing;

(2) Making substantial misrepresentations or false promises or suppression, concealment or omission of material facts in the conduct of his or her business or pursuing a flagrant and continued course of misrepresentation through agents, salespersons, advertising or otherwise in any transaction;

(3) Failing within a reasonable time to account for or to remit any moneys, valuable documents or other property, coming into his or her possession, which belongs to others;

...

(15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180, or of any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860;

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040[.]

12. Section 339.040, RSMo, establishes the criteria that must be established to hold a real estate broker's license and states, in relevant part:

1. Licenses shall be granted only to persons who present...satisfactory proof to the commission that they:

...

(3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

13. Rule 20 CSR 2250-8.020, regarding broker supervision, states:

(1) Individual brokers, designated brokers, and office managers/supervising brokers shall be responsible for supervising the real estate related activities including the protection of any confidential information as defined under 339.710.8, RSMo of all licensed and unlicensed persons associated with them, whether in an individual capacity or through a corporate entity, association or partnership.

14. Based on Ramos' failing to have RMK's rents deposited into an escrow account, cause exists to discipline Ramos' real estate broker license pursuant to § 339.100.2(1), RSMo.

15. Based on Ramos' failing to disclose the theft by her employee, she made a substantial suppression, concealment and/or omission of material facts in the conduct of her real estate business, cause exists to discipline Ramos' real estate broker license pursuant to § 339.100.2(2), RSMo.

16. Based on Ramos' failing, within a reasonable time, to remit monies owed to RMK for properties managed by Ramos, cause exists to discipline Ramos' real estate broker license pursuant to § 339.100.2(3) RSMo.

17. By failing effectively to supervise the employee charged with conducting an accounting of her business and by allowing that employee unsupervised access to her brokerage operating account, Ramos thereby violated 20 CSR 2250-8.020, .120(1), (4), (7), and .220(3), providing cause to discipline her license pursuant to § 339.100.2(15), RSMo.

18. Based on Ramos's failing to remit monies owed to RMK for properties managed by Ramos, and her failing effectively to supervise her employee as outlined above Ramos is not competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public; therefore, there would be grounds under § 339.040.1, RSMo, for the MREC to deny a license to Ramos. As a result, there is cause to discipline Ramos' license under § 339.100.2(16), RSMo.

II. JOINT DISCIPLINARY ORDER

Based on the foregoing, the parties hereby mutually agree and stipulate that the following shall constitute the order regarding discipline of Ramos's Broker License, subject to the following terms and conditions, and

entered by the MREC in this matter under the authority of §§ 536.060 and 621.110, RSMo. This disciplinary order shall become effective immediately upon the issuance of the consent order of the Commission without further action by either party:

1. **Ramos's Broker License is revoked and all indicia of the Broker License shall be surrendered immediately.** Ramos's Broker License is hereby REVOKED and ALL INDICIA OF CERTIFICATION SHALL BE SURRENDERED IMMEDIATELY upon this Settlement Agreement becoming effective.

2. This Joint Stipulation does not bind the MREC or restrict the remedies available to it concerning any future violations by Ramos of §§339.010 to 339.205 and 339.710 to 339.855, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Joint Stipulation.

3. This Joint Stipulation does not bind the MREC or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Joint Stipulation that are either now known to the MREC or may be discovered.

4. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

5. The terms of this Joint Stipulation are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Joint Stipulation nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

6. The parties to this Joint Stipulation understand that the MREC will maintain this Joint Stipulation as an open record of the MREC as required by Chapters 339, 610, and 324, RSMo, as amended.

7. Ramos, together with her heirs, assigns, agents, partners, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the MREC, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo, as amended, or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation, or from the negotiation or execution of this Joint Stipulation.

The parties acknowledge that this paragraph is severable from the remaining portions of the Joint Stipulation in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

III. CONCLUSION

In consideration of the foregoing, the parties consent to the entry of record and approval of this Joint Stipulation and to the termination of any further proceedings before the Commission based upon the complaint filed by the MREC in the above-captioned cause.

RESPONDENT

Date: 6-20-17

Cheryl A. Ramos

Cheryl A. Ramos

PETITIONER

Date: 07-06-17

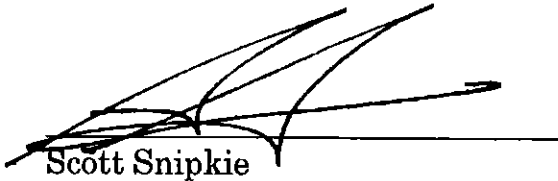
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Missouri Real Estate Commission

By: Terry Moore

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